

1 P.S. § 951, *et seq.* After this Court denied Defendant’s motion to dismiss, the parties commenced
2 discovery.

3 On September 8, 2016, Defendant served a third-party subpoena on the employer of
4 Plaintiff’s husband. Dkt. No. 34 at 1. Plaintiff’s attorney did not receive a copy of the subpoena
5 until September 9, 2016 when it arrived at his office via regular mail. *Id.* Plaintiff contends that
6 Defendant’s failure to provide her attorney with a copy of the subpoena prior to serving the
7 subpoena on her husband’s employer violates Rule 45(a)(4) of the Federal Rules of Civil
8 Procedure. As such, she requests that this Court sanction Defendant for the alleged violation.
9

10 Defendant counters that Plaintiff’s counsel failed to “meet and confer” with its counsel
11 prior to filing the instant motion and, therefore, requests that the motion be summarily denied
12 pursuant to the terms of this Court’s Standing Order. Alternatively, Defendant claims that it
13 complied with Rule 45(a)(4).
14

15 **III. DISCUSSION**

16 In relevant part, Federal Rule 45 states:

17 Notice to Other Parties Before Service. If the subpoena commands the production
18 of documents, electronically stored information, or tangible things or the
19 inspection of premises before trial, then before it is served on the person to whom
20 it is directed, a notice and a copy of the subpoena must be served on each party.

21 Fed. R. Civ. P. 45(a)(4). Federal Rule 5, in turn, governs the method of service on a party. Fed.
22 R. Civ. P. 5(a)(C). Specifically, Rule 5 mandates that if a party is represented by counsel, as is
23 the case here, “service ... must be made on the attorney[.]” Fed. R. Civ. P. 5(b)(1). Service on the
24 attorney may be accomplished by mailing the notice to the attorney’s last known address, “in
25 which event service is complete upon mailing.” Fed. R. Civ. P. 5(b)(2)(C).

Plaintiff admits that Defendant’s counsel mailed a copy of the subpoena to her counsel on
September 6, 2016, two days before the subpoena was served on her husband’s employer. Dkt.

1 No. 34, Ex. C. Therefore, Defendant complied with the notice requirement of Federal Rule 45. In
2 addition, this Court notes that the purpose of the prior notice requirement of Rule 45 is to give a
3 party the opportunity to “object to the release of the information prior to its disclosure.”
4 *Coleman-Hill v. Governor Mifflin Sch. Dist.*, 271 F.R.D. 549, 552 (E.D. Pa. 2010); *see also, In re*
5 *Asbestos Prods. Liab. Litig.*, 256 F.R.D. 151, 158 (E.D. Pa. 2009) (citing *Seewald v. IIS*
6 *Intelligent Info. Sys. Ltd.*, Civ. No. 93–cv–4252, 1996 WL 612497 (E.D.N.Y. Oct.16, 1996)
7 (when opposing counsel has notice and sufficient time to object, he is not prejudiced by a
8 violation of Rule 45’s notice requirement). Thus, while the Court has already determined that
9 Plaintiff was given prior notice of the subpoena, even if she had not been, under the facts as
10 presented in this motion, Plaintiff would not be able to establish prejudice because she had plenty
11 of time within which to “object to the release of the information prior to its disclosure.”¹
12 *Coleman-Hill*, 271 F.R.D. at 552. Accordingly, Plaintiff’s motion for sanctions must be denied.
13

14 The Court notes that this motion is an unnecessary waste of judiciary resources. Had the
15 parties meaningfully conferred as instructed by this Court’s Standing Order, the Court is
16 confident that the parties would have been able to resolve this dispute without intervention from
17 the Court. While Plaintiff’s counsel technically complied with this Court’s Standing Order when
18 he asked Defendant’s counsel about the subpoena on the day it was served on the employer, it
19 does not appear that either party made a meaningful effort to resolve the disagreement. In the
20 future, the Court expects the parties to work together to make sure this case proceeds smoothly,
21 including but not limited to, emailing courtesy copies of notices to opposing counsel.
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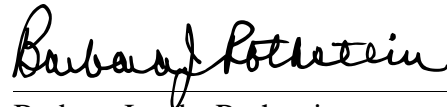
¹ Plaintiff received notice of the subpoena on September 9, 2016. Dkt. No. 34 at 1. The subpoena instructed that the documents should be produced on September 26, 2016. Dkt. No. 33, Ex. A.

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IV. CONCLUSION

For the foregoing reasons, Plaintiff's motion for sanctions is HEREBY DENIED.

Dated this 28th day of September, 2016.

A handwritten signature in black ink, reading "Barbara Jacobs Rothstein". The signature is written in a cursive style with a horizontal line underneath it.

Barbara Jacobs Rothstein
U.S. District Court Judge